IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

Crl.MC.No. 1054 of 2007()

AGAINST THE ORDER IN CMP.1610/2006 IN
CC.527/2005 of J.F.C.M COURT II, KASARAGOD

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PETITIONER: ACCUSED IN CC NO.527/2005

ABDHUL RAHIMAN.M.A.,
S/O.MOIDEENKUTTY, RESIDING AT EDANEER HOUSE,
P.O.EDANEER, VIA CHANGALA, KASARGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT

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1. STATE, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE KASARGOD PRIMARY CO-OPERATIVE
AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD.,
REPRESENTED BY ITS SECRETARY,
M.KRISHNAN NAMBIAR, S/O.KUNHIRAMAN NAMBIAR.

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/03/2007 ALONG WITH CRL.M.C.NOS.1059 AND 1060 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.1054, 1059 & 1060 of 2007

Dated this the 30th day of March, 2007

ORDER

The common petitioner faces indictment in three separate prosecutions, all under Section 138 of the Negotiable Instruments Act. Trial has already commenced. The proceedings are at the defence stage now, it is submitted. The short grievance raised by the petitioner is that the identical request made by the petitioner in all the three cases for an opportunity to cross examine the Secretary of the complainant/PW1 was unjustly turned down by the learned Magistrate. The petitioner, in these circumstances, prays that opportunity may be granted to the petitioner to recall PW1 and cross examine PW1. PW1 is very much available and is even now working as Secretary of the complainant/bank, it is submitted.

2. The learned Magistrate took note of the fact that many adjournments were made for cross examination of PW1 and the petitioner, who has not availed of these opportunities, is not entitled for the luxury of any such further opportunity.

3. The learned counsel for the petitioner submits that a lenient view must have been taken by the learned Magistrate. It is true that opportunities were granted for cross examination and the petitioner had not cross examined PW1, but that was done bona fide

under the impression/belief that the dispute will be settled and withdrawal or composition can be effected. In as much as it had become impossible to settle the matter, an indulgent further opportunity must have been granted and may be granted by this Court, it is submitted.

4. The reasons urged by the counsel for the petitioner may not be too convincing, but I do note that PW1 has not been cross examined at all. The petitioner wants to cross examine PW1 and the sense of justice of this Court will be hurt, if the petitioner were denied an opportunity to cross examine PW1, whatever be the reasons for which he had omitted/failed to cross examine PW1 earlier. This, I am satisfied, is a fit case, where subject to appropriate conditions, the petitioner can be granted an opportunity to cross examine PW1. In coming to this conclusion, the submission of the learned counsel for the petitioner that PW1 is available even now in the locality and that he is representing the complainant in the proceedings and continuing to work as Secretary, does influence me considerably.

5. These Crl.M.Cs are, in these circumstances, allowed. The petitioner shall be granted an opportunity to cross examine PW1, but subject to the condition that he shall deposit cost of Rs.500/- (Rupees Five hundred only) in each of these three cases before the learned Magistrate before the next date of posting.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-